

PREPONDERANCE OF EVIDENCE

Effective August 28, 2004, the standard of proof for making an investigative finding that child abuse or neglect exists will be “*Preponderance of Evidence*”. Findings of CA/N reports received prior to August 28th, 2004, used “Probable Cause” as the standard of proof.

A “*standard of proof*” indicates the degree to which the point must be proven. Common standards in law are:

- *Beyond a reasonable doubt*--(criminal cases)--for a criminal defendant to be convicted of a crime, the prosecutor must prove her case to the point that the jurors have no reasonable doubts in their minds that the defendant did whatever he is charged with having done.
- *Clear and convincing evidence*--(civil cases involving the potential loss of important interests such as the termination of parental rights)--for a party to prove a case under this standard, she must show something more than it is more likely than not, but not as much as beyond a reasonable doubt. No legal scholar has ever been able to define clear and convincing evidence more precisely than that.
- *Preponderance of Evidence*-- that degree of evidence that is of greater weight or more convincing than the evidence which is offered in opposition to it or evidence which as a whole shows the fact to be proved to be more probable than not.”
- *Probable Cause*--available facts when viewed in the light of surrounding circumstances which would cause a reasonable person to believe a child was abused or neglected”.

For Law enforcement it is the reasonable belief that a crime has or is being committed and is the basis for all lawful searches, seizures, and arrests.

WHAT DOES “PREPONDERANCE OF EVIDENCE” MEAN TO CHILDREN AND FAMILIES?

The finding that abuse or neglect exists, regardless of the standard of proof can effect children and families significantly. To victims of abuse or neglect it can mean an opportunity to intervene at a critical time in a child's life; to provide support and services to a family in need; or to prevent future incidents of maltreatment. It can also mean making determinations about family members or individuals responsible for the care and custody of children that are serious or criminal in nature. Decisions about allegations may adversely alter family dynamics and cohesiveness or hinder an individual's means of future employment or career aspirations. It is the Division's responsibility to make findings that are fair, unbiased and standup to a standard of proof equal to the gravity and seriousness of the allegations and impending consequences.

WHAT DOES “PREPONDERANCE OF EVIDENCE” MEAN TO THE INVESTIGATION RESPONSE?

It means that investigations should be conducted with an emphasis on:

1. A thorough collection and documentation of evidence;
 - When the evidence supporting a finding of abuse is balanced by evidence contradicting abuse, the law does not allow you to error on the side of protecting the child. You must make a finding that there is insufficient evidence to prove abuse or where relevant who the perpetrator was.

2. An accurate account of interviews (verbal and non-verbal);
 - Decision to find abuse/neglect based on weighing oral evidence (people's statements) which depend on deciding one person is more credible (believable) or one was less credible or unbelievable, workers must state reasons why they believed or didn't believe that person.
 - In situations where the alleged perpetrator refuses to provide a statement or their version of the facts, it should first be decided whether any other testimony is credible. If credible, it should be stated in the report that the statement of the witnesses who were examined were credible and the alleged perpetrator failed and/or refused to provide any contrary testimony or evidence, therefore, after considering available evidence, there is a finding that abuse/neglect occurred.
3. Descriptive, observable and behaviorally specific documentation of actions and conduct relative to the investigation;
4. Descriptive, observable account of the physical condition of children and environment;
5. Making investigative findings based on all available facts and evidence that is of greater weight or more convincing than the evidence offered in opposition to it.
 - The investigator must be prepared to testify that they reviewed and weighed all of the evidence that was available and believe that the evidence that B was abused and that A was the perpetrator is of greater weight than the evidence that A or B was not abused or that he/she was not the perpetrator.
 - The available evidence taken as a whole shows a greater probability that B was abused and that A was the perpetrator than that B was not abused and that A was not the perpetrator.
 - All "feelings" must be supported by either physical or oral testimony.
 - It is hard to give scenarios as just one thing can change the scales. It has a lot to do with credibility too.

EXAMPLES OF INADEQUATE VS. DESCRIPTIVE, OBSERVABLE OR BEHAVIORLY SPECIFIC

<u>Inadequate</u>	<u>Descriptive, Observable</u>
Filthy	Dirty, moldy dishes stacked and covering kitchen counter, animal feces on the floor, smell of urine
Sickly	Child was pale, eyes glassy, lethargic, underweight, HX of poor appetite, recent loss of weight
Cluttered	Soiled clothes covering the floor; smell of mildew; no sheets on stained mattresses
Inappropriately dressed	32 degrees outside/only a T-shirt, no shoes; wearing the same clothes for a week, smells of body odor
Sexual acting out	Fourth grader who touches genitals of self or others in classroom, four year old can describing explicit sex acts

TITLE: CHILD WELFARE MANUAL
SECTION 2: INTAKE
CHAPTER 4: INVESTIGATIONS RESPONSE
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Credible statement	Demonstrated truth vs. lie (describe), HX of incident matched physical injuries (describe), HX matched witnesses (describe), Teacher reports no HX of lying
Described as Violent	Specific HX, past injury, past criminal charges or convictions of violent crimes
Irresponsible	Missed 7 child Dr. appointments, failed to pick up from day care twice this week,
Hungry	4 year old child reports not having eaten anything in a 24 hour period accept for a small package of crackers. Observed no food in the house.
Abandoned	Mother left children at a neighbor's house saying she would return in one hour and has not been seen in a week. Other neighbors report seeing her in the neighborhood.

See Related Subject: Section 2, Chapter 4, Attachment G Collection of Evidence
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MEMORANDUM HISTORY: CD04-79